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CMA.No.1812 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1812 of 2018

Muthumari

.. Appellant

Vs.

1. M.Selvaraj
2. Universal Sompo General Ins. Co., Ltd.,
Capitale Towers, 5th Floor,
554 & 555, Annasalai
Opp. To Anna Arivalayam
Teynampet, Chennai – 600 018

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 03.02.2018 made in M.C.O.P.No.3926 of 2012 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes, Chennai).

For Appellant	: Mr.R.J.Radhika
For Respondents	: Mr.E.Rajadurai for M.B.Gopalan Associates for R2 R1 died

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 03.02.2018 made in M.C.O.P.No.3926 of 2012 on the file of the Motor Accidents Claims Tribunal/II Judge, Court of Small Causes, Chennai).



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2. The case of the appellant/claimant is that on 21.07.2012 at about 19.00 hours while the appellant was travelling in the autorickshaw bearing Regn.No.TN-02-Y-8013 at Madhavaram High Road, near Anthoniyar Hospital, proceeding to Moolakadai, a Tata Ace Van bearing Regn.No.TN-63-M-5892, coming from the opposite direction, driven by its driver, in a rash and negligent manner, dashed against the appellant autorickshaw. Due to the said impact, the appellant sustained grievous injuries. Claiming that the driver of the van is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.10,00,000/-.

3. The Tribunal, based on the oral and documentary evidences has observed that the driver of the first respondent is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.1,88,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.



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4. The learned counsel for the claimant / appellant has submitted that the award and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He further submitted that the Tribunal has erred in not relying on Ex.C1/Disability certificate given by the Medical Board after due examination of the injuries sustained by the claimant. It also erred in concluding that the Ex.P13/Discharge summary dated 09.11.2014 is in contra with Ex.C1/Disability Certificate of Medical Board dated 23.05.2017. It has failed to consider Ex.P4/Discharge summary dated 14.08.2012 while concluding that Ex.P13 and Ex.C1 are contradictory. It has also erred in fixing disability at only 13.5% for the injuries sustained by the claimant and relying on the manual for Doctor to evaluate permanent physical impairment for Orthopaedic Surgeons. It has failed to note that Ex.P13 reflect the continuous treatment for fracture in right femur for two years after the accident. It has also erred in not awarding compensation towards loss of amenities, future medical expenses and loss of earning power. It has failed to appreciate that the Hospital records also corroborates the fact of the pain and suffering undergone by the claimant as narrated in the headings “History of present illness” and “Course in the Hospital” and the subsequent surgery undergone by the claimant. He further submitted



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that the compensation awarded by the Tribunal under various heads are inadequate. In any event, the award granted by the Tribunal are grossly low.

Hence, he prays for enhancement of Award amount.

5. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss the Appeal.

6. Before the Tribunal, the Appellant/claimant has examined two witnesses and marked PW1 and PW2 and also filed fifteen documents which were marked as Ex.P1 to Ex.P15. On the side of the second respondent/Insurance Company, neither examined any witness nor marked any document.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.



8. Based on the evidences of P.W.1 and P.W.2 and perusing the exhibits in Ex.P1, Ex.P2 and Ex.P3, the Tribunal has fastened the liability on the Driver of the van, which has to be compensated by the second respondent herein.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that he was a Coolie and was earning Rs.500/- per day. Though the disability of the claimant was assessed at 45% by the Medical Board, the Tribunal mentioned that it is not inclined to place its total reliance on Ex.C1. As per Ex.P4 and Ex.P13 and as per the manual for Doctor to evaluate permanent physical impairment for orthopedic surgeons, prepared by American Academy of Orthopedic surgeons, the percentage for the injured claimant is assessed at 13.5% by the Tribunal.

10. As far as the multiplier is concerned, the Tribunal has erred in applying percentage method. Since the injured was aged 42 years at the time of accident, it would be appropriate to adopt 14 multiplier as per the *Sarla Verma* case. In the claim petition, it was stated that the injured was a Cooly earning Rs.500/- per day. A sum of loss of Rs.16,000/- fixed by the



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Tribunal is unnecessary. Considering the fact that the claimant has not sustained total disability, the Tribunal has fixed Rs.3,000/- for each percentage which is incorrect and hence the same needs re-visit. Accordingly, the disability of the claimant is assessed at 30% by this court. From the records, it is seen that he has taken continuous treatment in private hospitals even after discharge from the Government Hospital. This court is of the considered opinion that Rs.7000/- is the correct assessment for each percentage instead of Rs.3000/- and thus arrived at Rs.3,52,800/- ($7000 \times 12 \times 14 \times 30\%$) towards disability. In the instant case, considering the age of the claimant and year of the accident and nature of injuries, this court is inclined to adopt multiplier method. This Court is of the considered view that due to the nature of injuries sustained by the appellant and the period of treatment as in-patient and outpatient, he has incurred transport expenses and he must have taken nutritious food and hence this court is inclined to grant a sum of Rs.10,000/- each towards Transport to Hospital and Extra Nourishment instead of Rs.5000/- each as assessed by the Tribunal.

11. Further, on perusal of records, it is seen that the Tribunal has not granted any compensation under the head of loss of amenities for which he is entitled to and hence a sum of Rs.20,000/- is fixed by this court



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towards loss of amenities. However, this court is not inclined to grant any amount under the head of loss of income. Perusal of Ex.P4 and Ex.P13 shows that the claimant has taken treatment as in-patient in Government Hospital from 21.07.2012 to 14.08.2012 and also in Mehta Hospital from 06.11.2014 to 09.11.2014 respectively. The claimant has stated that he could not do his day to day need by himself without the help of attender during the treatment period. Hence the award granted under the head of attender charges is enhanced to Rs.20000/- instead of Rs.2000/- as assessed by the Tribunal.

12. From the records, it is seen that due to the accident that has occurred on 21.07.2012, the appellant has sustained grievous injury of fracture of Grade IIIb, compound super condyla, right femur grade II compound fracture, right fracture joint fracture of ulna and as per Ex.P13, the claimant has sustained non union fracture of right femur and ulna. but the Tribunal has awarded a meagre sum of Rs.16,000/- towards Pain and sufferings and hence the same needs revisit. Hence, a sum of Rs.30,000/- is fixed by this court towards Pain and sufferings.

13. Insofar as the other heads such as medical bills, the assessment



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of the compensation awarded by the Tribunal is a just compensation since it is based on medical bills and they do not call for any interference by this Court.

14. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Medical bills	1,09,547/-	1,09,547/-
Loss of earning capacity due to Disability	40,500/-	3,52,800/- (7000 x 12 x 14x 30%)
Attender charges	2000/-	20,000/-
Loss of income	16,000/-	NIL
Pain & Sufferings	10,000/-	30,000/-
Transport to Hospital	5,000/-	10,000/-
Extra Nourishment	5,000/-	10,000/-
Loss of amenities	NIL	20,000 /-
Total	1,88,047/-	5,52,347/-

15. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from



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Rs.1,88,047/- to Rs.5,52,347/- along with interest at the rate of 7.5% p.a.

from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.3926 of 2012 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

No costs.

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Index : Yes/No

Internet : Yes/No

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A.A.NAKKIRAN, J

gv

To

1. The Motor Accidents Claims Tribunal,
(II Judge, Court of Small Causes, Chennai).

2. The Section Officer,
V.R.Section,
High Court, Madras.

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